IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Suit No. 3177 of 2005

Ulhas Bhimrao Khatale ..Plaintiff

V/s

Devubai Bhimrao Khatale ..Defendant

Shri S.A.Sawant i/b Joseph Farnandes for plaintiff

Shri B.K.Barve for defendant nos.1,4 and 5

Shri A.K.Prajapati for defendant no.2

Shri M.S.Menon for defendant no.3

CORAM:D.K.DESHMUKH,J.

DATED:28th June 2007

P.C.:-

1. The plaintiff is represented by Advocate Shri S.A.Sawant, Shri B.K.Barve is represented for defendant nos.1, 4 and 5 and Shri A,J,Prajapati for defendant no.2 and Shri M.S.Menon for defendant no.3. Defendant nos.1 and 4 are present in court and defendant no.3 is also present in the court.

2. The learned Advocate appearing for the plaintiff states that though in the suit reliefs are claimed in relation to flat no.67, the plaintiff agrees that flat no.67 is owned by the defendant no.1 and therefore this

flat is not a subject matter of the suit.

3. So far as flat no.68 is concerned, the plaintiff, defendant no.1 and defendant nos. 3 to 5 agree that plaintiff and defendant nos.1 to 5 each have 1/6th share in that flat. It is also agreed that flat is not occupied by anybody. Considering that area of the flat is about 391 sq.ft. and considering that all of them have shares in the flat, plaintiff and defendant nos.1 and defendant nos.3 to 5 are agreed that only appropriate method would be to sell the flat and divide the sale proceeds amongst the sharers.

4. So far as defendant no.2 is concerned, he is represented by lawyer, when Notice of Motion was called yesterday none appeared for the defendant no.2. Plaintiff and other defendants were represented. They agreed for sale of the flat no.68 and division of the sale proceeds. Defendant no.2 was not present. The matter was kept today. Today defendant no.2 is represented by lawyer but his lawyer seeks time to take instructions from the defendant no.2.

5. Taking over all view of the matter and considering that the dispute is amongst members of a family and out of six members of the family, five have agreed to settle the dispute, in my opinion.

6. Following order would meet the ends of justice.

i) The Receiver of this Court is appointed as Receiver of Flat no.68, Receiver shall immediately take possession of flat no.68 and seal the flat. The Receiver shall thereafter issue an advertisement in appropriate news paper inviting the bids by adopting usual procedure for the flat.

ii) Parties to the suit shall also be entitled to submit their bids. The Receiver shall sale the flat to the highest bidder. After deducing the expenditure that might have been incurred for sale of the flat. The balance amount shall be divided by the Receiver in six equal shares and it shall be paid over to the plaintiff and defendant nos.1 to 5.

iii) For expenditure initially the plaintiff shall put the Receiver into fund the amount deposited by the plaintiff for the purpose of publishing notice of sale and other connected matters shall be first deducted from the amount of sale proceeds and paid over to the plaintiff by the Receiver.

iv) As the defendant no.2 has not consented to this order, in case the defendant no.2 is aggrieved by this order he shall be liberty to make an appropriate application for modification or cancellation of this order. Such application can

be made by the defendant within a period of four weeks from today. If such an application is not made within that time, it shall be presumed that the defendant no.2 has no objection for disposal of the suit in these terms.

7. Suit is disposed of in above terms.

8. Refund of court fees as per rules.

(D.K.DESHMUKH,J.)